

No. 13-5966

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

May 22, 2014

DEBORAH S. HUNT, Clerk

Before: BOGGS, NORRIS, and DONALD, Circuit Judges.

Carlos Hernandez, a federal prisoner proceeding pro se, filed a motion titled “Motion for Authorization to File a Second or Successive Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255” in the district court. The district court transferred the motion to this court for authorization for filing pursuant to 28 U.S.C. § 2244. See *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

A petitioner must obtain leave from this court in order to file a second or successive petition in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). However, a review of the record reveals that, despite the title of the instant motion, Hernandez has not previously filed in the underlying matter an application for relief under § 2255. Therefore, Hernandez does not require our prior authorization.

Accordingly, we deny Hernandez's motion for authorization as unnecessary and remand this case to the district court for further proceedings.

ENTERED BY ORDER OF THE COURT

*John S. Smith*

## Clerk